

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201606347	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/03/2016 7:05 PM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 1/3/2018	EO SOL 1/3/2018	
Date/Time CV Reported Fri, 07/22/2016 3:54 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/22/2016 3:54 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM James Tobin	04354	951340	052 PCT
2. SGT Charles Cavallaro	4758	938197	052 PCT
3. Officers			052 PCT
4. POM Edmundo Rivera	696	955382	052 PCT
5. POM Juan Gomez	27475	953916	052 PCT
6. An officer			052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Charles Cavallaro	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro authorized the stop of the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
B.SGT Charles Cavallaro	Force: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro pointed his gun at § 87(2)(b).	[REDACTED]
C.POM Edmundo Rivera	Force: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera pointed his gun at § 87(2)(b).	[REDACTED]
D.POM James Tobin	Force: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin pointed his gun at § 87(2)(b).	[REDACTED]
E.POM Juan Gomez	Force: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Juan Gomez pointed his gun at § 87(2)(b).	[REDACTED]
F.POM Edmundo Rivera	Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera spoke discourteously to § 87(2)(b).	[REDACTED]
G.POM Edmundo Rivera	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera threatened § 87(2)(b) with the use of force.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
H.POM Juan Gomez	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Juan Gomez frisked § 87(2)(b)	
I.POM James Tobin	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin frisked § 87(2)(b)	
J.POM Juan Gomez	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Juan Gomez searched § 87(2)(b)	
K.POM James Tobin	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin searched § 87(2)(b)	
L.POM Edmundo Rivera	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera frisked § 87(2)(b)	
M.POM Edmundo Rivera	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera frisked § 87(2)(b)	
N. An officer	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, an officer frisked § 87(2)(b)	
O. An officer	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, an officer searched § 87(2)(b)	
P.SGT Charles Cavallaro	Abuse: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro authorized a search of the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
Q.SGT Charles Cavallaro	Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro spoke discourteously to § 87(2)(b)	
R.POM James Tobin	Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin spoke discourteously to § 87(2)(b)	
S.POM Juan Gomez	Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, and en route to the 52nd Precinct stationhouse, Police Officer Juan Gomez spoke discourteously to § 87(2)(b)	
T.SGT Charles Cavallaro	Abuse: At the 52nd Precinct stationhouse, Sergeant Charles Cavallaro authorized a strip search of § 87(2)(b)	
U. Officers	Abuse: At the 52nd Precinct stationhouse, officers threatened § 87(2)(b) with the use of force.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On July 22, 2016, § 87(2)(b) called the CCRB to file this complaint (BR 01).

On July 3, 2016, at approximately 7:05 p.m., § 87(2)(b) was in the backseat of a vehicle driven by his friend, § 87(2)(b) with two of § 87(2)(b)'s other friends, § 87(2)(b) and § 87(2)(b) when they were pulled over by Sergeant Charles Cavallaro, Police Officer James Tobin, Police Officer Edmundo Rivera, and Police Officer Juan Gomez, all of the 52<sup>nd</sup> Precinct, at the intersection of East 194 Street and Bainbridge Avenue in the Bronx (**Allegation A**).

Sgt. Cavallaro, PO Rivera, PO Tobin, and PO Gomez all allegedly drew and pointed their guns at the vehicle (**Allegations B, C, D, and E**). PO Rivera allegedly yelled, "Don't fucking move or you'll get shot" (**Allegations F and G**). PO Tobin and PO Gomez pulled § 87(2)(b) from the vehicle. § 87(2)(b) and § 87(2)(b) also exited the vehicle.

PO Gomez and PO Tobin both frisked and searched § 87(2)(b) (**Allegations H, I, J, and K**). PO Rivera frisked § 87(2)(b) (**Allegation L**) and § 87(2)(b) (**Allegation M**). An unidentified officer frisked and searched § 87(2)(b) (**Allegation N and O**). Under the supervision of Sgt. Cavallaro, officers searched § 87(2)(b)'s vehicle (**Allegation P**).

Sgt. Cavallaro recovered a small plastic bag of marijuana. It is disputed from whence this marijuana was recovered. Sgt. Cavallaro said, "fucking...are you serious? Stupid motherfucker," to § 87(2)(b) (**Allegation Q**). PO Tobin told § 87(2)(b) repeatedly to "Shut the fuck up" (**Allegation R**). PO Gomez told § 87(2)(b) "Shut the fuck up. No one cares" (**Allegation S**).

§ 87(2)(b) was placed under arrest for § 87(2)(b) (BR 02). The bag of marijuana that Sgt. Cavallaro recovered was field tested positive and vouchered in support of § 87(2)(b)'s arrest (BR 38). § 87(2)(b) and § 87(2)(b) were not arrested or issued summonses and were released from the scene. En route back to the 52<sup>nd</sup> Precinct stationhouse, § 87(2)(b) said he was going to call his lawyer, to which PO Gomez replied, "Tell your lawyer to suck my dick" (**subsumed under Allegation S**).

Upon arrival to the 52<sup>nd</sup> Precinct stationhouse, Sgt. Cavallaro authorized a strip search of § 87(2)(b) (**Allegation T**). Unidentified officers threatened to "beat the shit" out of § 87(2)(b) if he did not comply with the strip search (**Allegation U**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) furnished the investigation with a video file that § 87(2)(b) recorded during this incident (BR 03 to 05).



2016-09-30\_12-10-29.mp4

On September 1, 2016, this case was reassigned from Inv. Ho to Inv. Courage.

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to § 87(2)(b)'s arrest.
- On September 30, 2016, a Notice of Claim request was submitted to the Comptroller's office. The results will be added to the case file upon receipt (BR 39).

- § 87(2)(b) s criminal case stemming from this incident remains open, with his next court appearance scheduled for § 87(2)(b) . § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
(BR 06).
- § 87(2)(b) was not arrested in this case. § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
(BR 07).

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) (BR 08).
- This is the first CCRB complaint involving § 87(2)(b) (BR 09).
- Sgt. Cavallaro has been a member of the service for 11 years. There are 26 previous allegations against him across 14 prior cases that occurred between 2008 and the present, none of which has been substantiated. § 87(2)(g)  
§ 87(2)(g)
- PO Tobin has been a member of the service for 5 years. There are three previous allegations against him across three prior cases that occurred between 2015 and the present. § 87(2)(g)  
§ 87(2)(g)
- PO Rivera has been a member of the service for 3 years. There are 14 previous allegations against him across four cases that occurred between 2015 and the present, two of which remain open. § 87(2)(g)  
§ 87(2)(g)
- PO Gomez has been a member of the service for 3 years. There are 9 previous allegations against him stemming from 5 cases, none of which has been substantiated. § 87(2)(g)  
§ 87(2)(g)

### **Potential Issues**

- § 87(2)(b) did not cooperate with this investigation after missing one scheduled appointment and failing to respond to a total of five calls and three letters.
- § 87(2)(b) did not cooperate with this investigation after missing three scheduled appointments to provide an in-person statement.
- § 87(2)(b) thought his friend § 87(2)(b) might have witnessed this incident. § 87(2)(b) could not provide any other identifying information for “§ 87(2)(b). In the absence of any means by which to identify this individual, or any other member of the crowd of onlookers that allegedly gathered during this incident, the investigation could not obtain statements from them.
- § 87(2)(b) claimed to have two videos of this incident, one that was recorded by § 87(2)(b) and the other of which was recorded by his friend, “§ 87(2)(b) § 87(2)(b) provided the video that was taken by § 87(2)(b) § 87(2)(b) sent two screenshots from the

video taken by “§ 87(2)(b)” (BR 10) but did not send the video file itself despite attempts to follow up.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- **Vehicle stop:** Sgt. Cavallaro was the sole supervisor on scene, and observed the violation that preceded the traffic stop. This allegation has consequently been pleaded against him.
- **Guns pointed:** Although only Sgt. Cavallaro and PO Rivera acknowledged drawing their weapons, and only Sgt. Cavallaro acknowledged pointing it, insofar as the civilians said that all officers had their guns pointed at the vehicle upon approach, this allegation has been pleaded against each officer.
- **Discourtesy and Threat of Force:** § 87(2)(b) initially alleged that an officer who he could not identify yelled out, “Don’t fucking move or you’ll get shot.” § 87(2)(b) then, upon reviewing the video footage, identified PO Rivera as the voice saying, “Don’t fucking move,” though no threat is heard. Sgt. Cavallaro and PO Rivera both acknowledged that they might have told § 87(2)(b) “Don’t fucking move,” but denied, or denied recalling, threatening to shoot him. Insofar as § 87(2)(b) identified PO Rivera as the subject officer of the profanity, and in this context it was likely the same officer who made the alleged threat, both allegations have been pleaded against PO Rivera.
- **Frisk and Search of** § 87(2)(b) alleged that he was only searched, not frisked, and that only PO Gomez did so. Insofar as PO Gomez and PO Tobin both acknowledged that they together frisked and searched § 87(2)(b) these allegations have been pleaded against both of them.
- **Frisks of** § 87(2)(b) **and** § 87(2)(b) Insofar as PO Rivera acknowledged that he frisked both § 87(2)(b) and § 87(2)(b) these allegations have been pleaded against him.
- **Frisk and Search of** § 87(2)(b) § 87(2)(b) alleged that an officer – described only as a Hispanic male, 5’8” tall – frisked and searched him. § 87(2)(b) did not cooperate with the investigation and no further details could be obtained from him. None of the officers interviewed acknowledged frisking or searching § 87(2)(b) specifically. As such, the investigation cannot identify the subject officer, and these allegations have been pleaded against ‘an officer’ of the 52<sup>nd</sup> Precinct.
- **Vehicle search:** Insofar as Sgt. Cavallaro was the sole supervisor at the scene, this allegation has been pleaded against him.
- **Discourtesy:** Although Sgt. Cavallaro denied saying, “fucking...are you serious? Stupid motherfucker,” § 87(2)(b) identified him as the speaker of this statement on the video footage. As such, this allegation has been pleaded against him.
- **Discourtesy:** § 87(2)(b) described the officer who told him, “Shut the fuck up,” and, “Tell your lawyer to suck my dick,” as a dark-skinned Hispanic male, 5’8” to 5’9” tall, 165 to 170 pounds, with average build, short black hair, and in his late 20s. Although PO Gomez denied making these comments, as the provided description most closely matches the pedigree of PO Gomez (BR 11), these allegations have been pleaded against him.

- **Discourtesy:** § 87(2)(b) identified the officer who repeatedly said, “Shut the fuck up,” during this incident, as PO Tobin. Although PO Tobin denied making this statement, this allegation has been pleaded against him.
- **Threat of force:** § 87(2)(b) claimed that officers threatened to “beat the shit” out of him, but did not specify which ones, and did not respond to attempts to follow up to clarify this question. All officers denied threatening § 87(2)(b) with the use of force. The investigation was unable to identify the officers who allegedly made this threat and it has consequently been pleaded against ‘officers’ of the 52<sup>nd</sup> Precinct.

#### **Allegations not pleaded**

- § 87(2)(b) claimed that he was never carrying any marijuana, denied ever attempting to dispose of any marijuana, and alleged that Sgt. Cavallaro took marijuana recovered from § 87(2)(b) and planted it on § 87(2)(b) in support of his arrest. This allegation was referred to IAB under case § 87(2)(b).
- **Force:** § 87(2)(b) alleged that he was pulled from the vehicle. As the investigation established that no more physical force was used against § 87(2)(b) than that necessary to remove him from the vehicle, and that this force was minor and resulted in no injuries, no corresponding allegation has been pleaded.
- **Interference with recording:** § 87(2)(b) recorded a portion of this incident on his cell phone. § 87(2)(b) said that as he recorded it, PO Rivera took the cell phone from him and placed it on the vehicle. Because § 87(2)(b) was the subject of police enforcement action – i.e. he was placed into handcuffs, and at minimum frisked, if not searched – it was not improper for PO Rivera to remove the cell phone from his hand. As such, no allegation has been pleaded.
- **Discourtesy:** § 87(2)(b) alleged that Sgt. Cavallaro told § 87(2)(b) that he was a “smartass,” and that when § 87(2)(b) asked why he was being arrested an unspecified officer said, “You want to be an asshole?” Because § 87(2)(b) did not himself make these allegations, and they are not documented on the video footage, they consequently have not been pleaded.
- **Discourtesy:** In his in-person statement, § 87(2)(b) alleged that officers threatened to “beat the shit” out of him inside of the 52<sup>nd</sup> Precinct stationhouse if he did not cooperate with being strip searched. Because the profanity was used in the context of a threat, and because the threat is the more egregious allegation, the use of profanity has not separately been pleaded.

#### **Allegation A – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro authorized the stop of the vehicle in which § 87(2)(b)**

**§ 87(2)(b) and § 87(2)(b) were occupants.**

It is not disputed that officers stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) (BR 12) said that § 87(2)(b) was driving the vehicle. § 87(2)(b) drove roughly three minutes eastbound on East 194<sup>th</sup> Street and made a left turn onto Bainbridge Avenue, at which time they were pulled over by Sgt. Cavallaro and his officers. § 87(2)(b) did not observe § 87(2)(b) commit any moving violations, nor did the officers tell them that they had. § 87(2)(b) assumed that he and his friends had been racially profiled, as they were

four Hispanic men. § 87(2)(b) also acknowledged that before they were pulled over, while they were driving, § 87(2)(b) passed around a plastic bag of marijuana inside the car, allowing § 87(2)(b) and § 87(2)(b) to smell it before they returned it to § 87(2)(b). § 87(2)(b) did not believe that officers would have been able to see this.

Video footage does not begin until after the vehicle stop has been effected and is of no probative value for this allegation.

Sgt. Cavallaro (BR 13) said that he was driving behind the vehicle when he observed it make a left turn from Bainbridge Avenue onto East 194<sup>th</sup> Street without signaling, and said that this was the sole reason for the vehicle stop. Sgt. Cavallaro said that he later warned and admonished § 87(2)(b) about his turn signal, but did not issue him a summons, because § 87(2)(b)'s arrest superseded Sgt. Cavallaro's concern regarding § 87(2)(b)'s failure to signal, and because Sgt. Cavallaro did not want to linger at the scene too long due to the crowd that started to gather.

PO Tobin (BR 14) confirmed that he saw § 87(2)(b) fail to signal a left turn, and that he was stopped for this reason.

PO Rivera (BR 15) and PO Gomez (BR 16) did not actually observe § 87(2)(b) commit this violation because they were seated in the backseat of the police vehicle, but said that they were informed of the violation by Sgt. Cavallaro and PO Tobin.

In order to stop a vehicle, officers must either have probable cause of a traffic violation or reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime. People v. Robinson, 97 N.Y.2d 321 (2001) (BR 17)

§ 87(2)(g)

**Allegation B – Force: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro pointed his gun at § 87(2)(b)**

**Allegation C – Force: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera pointed his gun at § 87(2)(b)**

**Allegation D – Force: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin pointed his gun at § 87(2)(b)**

**Allegation E – Force: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Juan Gomez pointed his gun at § 87(2)(b)**

It is undisputed that officers drew their firearms, and that at least one of them pointed their firearm at § 87(2)(b) during this incident, but it is disputed how many drew or pointed their firearms and at what time.

§ 87(2)(b) (BR 12) said that once the vehicle was pulled over, he turned around and saw the unmarked police vehicle behind them. All four officers approached § 87(2)(b)'s vehicle with their guns drawn and pointed at § 87(2)(b) (In initially filing this complaint (BR 01), § 87(2)(b) said that Sgt. Cavallaro, PO Rivera, and PO Gomez already had their guns drawn when they first exited their vehicle, and made no mention of them pointing the guns at him). § 87(2)(b) made no mention of making any furtive movements as officers approached the vehicle. § 87(2)(b) began to “mouth off,” at the officers, stating, “Why you guys have your guns out...what are you gonna do, shoot me? Shoot me...you’re not supposed to have your guns out.”

§ 87(2)(b) (BR 18 and 19) said that all officers except for PO Tobin had their firearms drawn and pointed at § 87(2)(b) when they approached the vehicle. § 87(2)(b) said that when the officers approached the vehicle, § 87(2)(b) was reaching overhead with his right arm to scratch his upper back.

In their telephone statements, § 87(2)(b) (BR 20) and § 87(2)(b) (BR 21) both said that all officers had their firearms drawn and pointed at § 87(2)(b) when they approached the vehicle.

Video footage (see above file 2016-09-30\_12-10-29.mp4) does not depict any officers with their guns out. The video is mainly of interest for its audio content, as no officers are ever clearly visible upon it. At the very beginning of the video, instructions were being given to the occupants of the vehicle, including, “Don’t move,” and, “Hands where I can see them, everybody. Put everything down, hands on the...” The officers who are speaking cannot be identified from the video alone. It is not clear when exactly when § 87(2)(b) began filming and if additional instructions had previously been given.

Sgt. Cavallaro (BR 13) said that once the officers pulled over behind § 87(2)(b)'s vehicle, he observed § 87(2)(b) moving in the backseat of the vehicle, specifically by bending or leaning slightly forward out of his seat. As Sgt. Cavallaro exited the police vehicle and approached § 87(2)(b)'s rear passenger side, Sgt. Cavallaro saw that § 87(2)(b) had sat back down, but was now pushing his hips up from his seat, with one of his hands – Sgt. Cavallaro could not recall which – behind his body. Sgt. Cavallaro could not actually see § 87(2)(b)'s hand, but saw that his arm was moving back and forth, as though digging for something, although Sgt. Cavallaro could not tell if § 87(2)(b) was trying to hide something or take something out. Upon approach, officers repeatedly told § 87(2)(b) to show his hands and to stop what he was doing, instructions that § 87(2)(b) ignored. Fearing that § 87(2)(b)'s movements and refusal to comply with commands might mean that he was armed, and that § 87(2)(b) was possibly attempting to pull out a weapon, Sgt. Cavallaro drew his firearm and pointed it at § 87(2)(b) while continuing to scream at § 87(2)(b) to show his hands. Sgt. Cavallaro believed that other officers also drew their weapons, but could not identify which officers did so specifically, or how many did so.

§ 87(2)(g)  
Fearing that § 87(2)(b) might have been armed, PO Rivera drew his firearm, but denied pointing it, and said he merely held it pointed at the ground at his side. PO Rivera did not point it as he “did not actually see a firearm,” but wanted to be ready in case there was. PO Rivera holstered his gun once § 87(2)(b) was removed from the vehicle. PO Rivera did not remember seeing any officers he was with draw their weapons, as he was too focused upon § 87(2)(b). PO Rivera also noted that the other occupants of the vehicle were moving around, but he could not be very specific as to how, stating only that they were not sitting still.

PO Tobin (BR 14) confirmed that he observed § 87(2)(b) moving as he approached § 87(2)(b)'s vehicle on its driver side. § 87(2)(b) was reaching his right hand behind his back, level with his waist. PO Tobin could not distinguish if § 87(2)(b) had his hand in his waistband. PO Tobin did not know what, if anything, was in § 87(2)(b)'s hand, and did not know if § 87(2)(b) was possibly armed or attempting to conceal contraband from officers. PO Tobin almost immediately opened the rear driver side door of the vehicle, reached inside, and grabbed § 87(2)(b)'s hand to secure it. PO Tobin ordered § 87(2)(b) to show his hands



and § 87(2)(b) refused to do. PO Tobin denied that he ever drew or pointed his firearm at § 87(2)(b). PO Tobin did not recall seeing any other officer draw their firearm.

PO Gomez (BR 16) also confirmed that he observed § 87(2)(b) moving as he approached § 87(2)(b)'s vehicle, § 87(2)(g). PO Gomez said that as he approached the driver side of the vehicle behind PO Tobin, he saw § 87(2)(b) leaning over from the rear driver seat towards the middle of the vehicle. Once PO Tobin reached the driver side, PO Tobin immediately reached into the vehicle with one of his hands and began yelling, "Give me your hands." As PO Gomez moved closer to PO Tobin, he saw that PO Tobin was holding § 87(2)(b)'s left arm, which was underneath the waistband of § 87(2)(b)'s pants on his rear left side. § 87(2)(b) ignored the instructions to show his hands and tried to pull his body, including his arm, away from PO Tobin. PO Gomez reached inside the vehicle and aided PO Tobin in gripping § 87(2)(b)'s arm. § 87(2)(b)'s movements and failure to comply led PO Gomez to believe he might have been armed. PO Gomez never drew or pointed his firearm at § 87(2)(b) and did not recall seeing any officer do so.

In addition to the aforementioned descriptions officers provided of § 87(2)(b)'s furtive movements and failure to comply with their instructions, PO Gomez and PO Rivera characterized the area of the vehicle stop as being high-crime in that there had been shootings along that block earlier in the summer. Furthermore, PO Gomez and PO Rivera both testified to recognizing § 87(2)(b) and § 87(2)(b) once they were level with the backseat of § 87(2)(b)'s vehicle. PO Gomez and PO Rivera had never arrested § 87(2)(b) but had worked with officers who previously had. There is a list of Gang members that circulates in the 52<sup>nd</sup> Precinct, and § 87(2)(b) and § 87(2)(b) are all listed on it as being members of the § 87(2)(b) gang, and that PO Gomez had seen § 87(2)(b) hanging out with § 87(2)(b) and § 87(2)(b) on § 87(2)(b) in the Bronx. A BADS search revealed that § 87(2)(b) (BR 06), § 87(2)(b) (BR 07), and § 87(2)(b) (BR 37) have each had multiple arrests in the confines of the 52<sup>nd</sup> Precinct since 2009. Sgt. Cavallaro and PO Tobin made no mention of the high-crime nature of the location, or of any knowledge that they had of § 87(2)(b)'s possible gang affiliation.

An officer has broad discretion to draw and point his firearm at another person if he has a reasonable fear for his own or another's safety based upon a totality of the circumstances. NYPD v. Gliner, OATH Index. No. 955/100 (2006) (BR 22)

§ 87(2)(g)

§ 87(2)(g)

**Allegation F – Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera spoke discourteously to § 87(2)(b)**

**Allegation G – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) (BR 12) alleged that once officers approached the vehicle, PO Rivera yelled out, “Don’t move, don’t fucking move or you’ll get shot.”

In his telephone statement (BR 20), § 87(2)(b) alleged that an officer matching PO Rivera’s description told § 87(2)(b) “Don’t fucking move,” and that when § 87(2)(b) replied, “So you’re gonna shoot me?” PO Rivera said, “Yeah, I’m gonna fucking shoot.” As was previously discussed, § 87(2)(b) did not cooperate with the investigation.

In his telephone statement (BR 21), § 87(2)(b) alleged that unspecified officers told the occupants of the vehicle to put their “fucking” hands up. When § 87(2)(b) asked, “What are you going to do, shoot?” An officer who § 87(2)(b) did not describe said, “I’m going to shoot if you keep moving.” As was previously discussed, § 87(2)(b) did not cooperate with the investigation.

In his telephone statement (BR 18), § 87(2)(b) alleged that multiple officers upon approached said, “Don’t fucking move.” In his in-person statement (BR 19), § 87(2)(b) did not repeat this allegation, instead alleging that an officer matching PO Tobin’s description said, “Shut the fuck up. Stop moving. Put your hands up.”

Video footage (see above filed 2016-09-30\_12-10-29.mp4) documents that an officer – it is not clear which, as the officer does not actually appear on the video footage – says twice, at 00:04 seconds and 00:11 seconds, “Don’t fuckin’ move.” At no point is any threat of physical force audible on the video footage. § 87(2)(b) identified the officer who says, “Don’t fucking move,” as PO Rivera, only after reviewing video footage at the end of his interview.

Sgt. Cavallaro (BR 13) acknowledged that he may have told § 87(2)(b) “Don’t fucking move.” Sgt. Cavallaro said that by the point at which he said this, officers had already given § 87(2)(b) multiple commands to stop and show his hands. Sgt. Cavallaro thought it was possible that other officers said, “Don’t fucking move,” to § 87(2)(b) but could not specifically remember them doing so, or identify which officers may have done so. Sgt. Cavallaro used profanity only in the context of issuing § 87(2)(b) instructions. Sgt. Cavallaro used the profanity because he feared for his safety based upon § 87(2)(b)’s movements and his failure to comply with instructions that had previously been issued. Sgt. Cavallaro could not identify the voice of the officer who is heard to be saying, “Don’t fucking move.” Sgt. Cavallaro did not recall ever threatening to shoot § 87(2)(b).

PO Rivera (BR 15) confirmed that § 87(2)(b) was given several commands to show his hands, and that § 87(2)(b) failed to comply with these commands. PO Rivera denied ever telling § 87(2)(b) “Don’t fucking move,” or hearing any officer say this. PO Rivera denied ever threatening to shoot § 87(2)(b). PO Rivera reviewed the video footage but could not identify the voice who says, “Don’t fucking move,” nor did it refresh his recollection as to ever saying or hearing any officer say it.

PO Tobin (BR 14) also said that § 87(2)(b) was given several commands that he did not heed. PO Tobin never told § 87(2)(b) “Don’t fucking move.” PO Tobin did not threaten to shoot § 87(2)(b).

PO Gomez (BR 16) corroborated that § 87(2)(b) was given several instructions with which he did not comply. PO Gomez acknowledged that he may have said, “Don’t fucking move,” as he reached into the vehicle to grab § 87(2)(b)’s hands, though he did not specifically remember doing so. PO Gomez said this because it was a “high-intensity” situation and he feared for his life. PO Gomez did not recall hearing any other officer say this. PO Gomez

could not identify the voice audible as saying, “Don’t fucking move,” on the video footage. PO Gomez did not threaten to shoot § 87(2)(b) or hear any officer do so.

In stressful encounters, an officer may use limited profanity where the need to gain compliance or maintain control of an incident is present. NYPD v. Court, OATH Index 78667/03 (BR 23)

§ 87(2)(g)

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**Allegation H – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Juan Gomez frisked § 87(2)(b)**

**Allegation I – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin frisked § 87(2)(b)**

**Allegation J – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Juan Gomez searched § 87(2)(b)**

**Allegation K – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin searched § 87(2)(b)**

**Allegation L – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera frisked § 87(2)(b)**

**Allegation M – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer Edmundo Rivera frisked Edward § 87(2)(b)**

**Allegation N – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, an officer frisked § 87(2)(b)**

**Allegation O – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, an officer searched § 87(2)(b)**

§ 87(2)(b) (BR 12) acknowledged that before the officers pulled them over, while they were driving, § 87(2)(b) passed around a plastic bag of marijuana inside the vehicle, allowing § 87(2)(b) and § 87(2)(b) to smell it. The bag of marijuana was returned to § 87(2)(b) did not know what § 87(2)(b) did with the bag of marijuana once it was returned to him.

After the officers effected the vehicle stop, PO Tobin and PO Gomez eventually opened the rear driver side door of § 87(2)(b)'s vehicle, gripped him by both shoulders, and pulled him out. § 87(2)(b) was escorted to the front of the unmarked police vehicle, told to place

his hands palm-down upon it, and to spread his legs. § 87(2)(b) alleged that PO Gomez then searched him without first frisking him. PO Gomez did so by inserting his hand into § 87(2)(b)'s pants, staying outside of his underwear, to feel his testicles to check if he was hiding anything, and slid his hand in a bladed motion in the cleft of § 87(2)(b)'s buttocks. § 87(2)(b) thought PO Gomez was checking for narcotics at this time. Nothing was recovered from § 87(2)(b).

§ 87(2)(b) claimed that the bag of marijuana § 87(2)(b) had passed around was recovered. § 87(2)(b) did not know from whence it was recovered, how, by whom, or at what point. Sgt. Cavallaro tossed the bag of marijuana on to the hood of the police vehicle and told PO Gomez to charge § 87(2)(b) with possession of the marijuana.

§ 87(2)(b) (BR 18 and 19) confirmed that § 87(2)(b) had a bag of marijuana inside the vehicle before they were pulled over, but denied that it was passed around to each occupant, stating that § 87(2)(b) rather held it up to display it to the other occupants. The bag of marijuana was never out of § 87(2)(b)'s possession. § 87(2)(b) did not see what § 87(2)(b) did with the bag after showing it to his passengers.

§ 87(2)(b) said it was PO Rivera, not PO Gomez, who handled § 87(2)(b) and characterized PO Rivera as frisking rather than searching § 87(2)(b) in that PO Rivera groped § 87(2)(b)'s groin and swiping his fingers along his buttocks from outside of his clothing. § 87(2)(b) said that PO Rivera then approached § 87(2)(b) where he sat in the vehicle and handcuffed him. PO Rivera then frisked him in the same fashion that he had frisked § 87(2)(b). PO Tobin frisked § 87(2)(b) and an unspecified officer also frisked § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) was placed into handcuffs.

Sgt. Cavallaro recovered a bag of marijuana. § 87(2)(b) believed it was recovered from the vicinity of the driver's seat, or possibly on § 87(2)(b)'s person. Sgt. Cavallaro then took this marijuana and planted it on § 87(2)(b) because § 87(2)(b) was "talking shit" to the officers.

In his telephone statement, § 87(2)(b) (BR 20) said that he was searched by an officer, whom he described solely as a Hispanic male, 5'8" tall, who reached his hands into his pockets and cupped his testicles from outside of his pants to see if he had any items concealed. An officer who § 87(2)(b) described solely as a Sergeant recovered the bag of marijuana in the driver's side door of the vehicle. The officers did not ask any questions about who the marijuana belonged to, and charged § 87(2)(b) with possession. As was previously discussed, § 87(2)(b) did not cooperate with the investigation and no further clarifying details could be obtained from him.

In his telephone statement, § 87(2)(b) (BR 21) said that the same officer who searched § 87(2)(b) PO Rivera, also frisked him, by touching the outside of his pants. § 87(2)(b) also said that the marijuana belonged to § 87(2)(b) but that § 87(2)(b) was charged with it. As was previously discussed, § 87(2)(b) did not cooperate with the investigation and no further details could be obtained from him.

Video footage (see above file 2016-09-30\_12-10-29.mp4) does not capture the frisks and searches of § 87(2)(b) and § 87(2)(b). Video footage does reflect that an officer – again, the officer is not visible to the camera and therefore cannot be identified by video footage alone – at 1:03 minutes says, "Sorry, I gotta check you," and a male responds, "No, no, I got no problems, I just don't want to get shot."

Sgt. Cavallaro (BR 13) said that after § 87(2)(b) failed to comply with repeated commands to show his hands, Sgt. Cavallaro ordered his officers to remove § 87(2)(b) from

the vehicle. As § 87(2)(b) was pulled from the vehicle, Sgt. Cavallaro saw through the rear passenger side window a small, or approximately 2-inch by 2-inch, plastic bag of marijuana fall from § 87(2)(b). Sgt. Cavallaro did not see from where more specifically the bag of marijuana fell. Sgt. Cavallaro did not know if PO Tobin, PO Gomez, and PO Rivera observed this independently, and did not communicate to them that he had observed the marijuana fall. Sgt. Cavallaro then walked around the rear of the vehicle and retrieved the marijuana, which was on the ground outside of the vehicle.

Once § 87(2)(b) was removed from the vehicle, Sgt. Cavallaro noticed that the entire vehicle smelled of marijuana. Sgt. Cavallaro had not previously noticed the odor of marijuana as he was focused on § 87(2)(b)'s movements; or rather, he had noticed it, but it was not his initial, primary concern.

Sgt. Cavallaro believed PO Tobin conducted the frisk of § 87(2)(b). Sgt. Cavallaro believed that this frisk was conducted based upon § 87(2)(b)'s movements while inside the vehicle and failure to comply with instructions, which gave rise to their belief that he was armed. There was no other reason to perform the frisk. No items were felt during this frisk. The search of § 87(2)(b) was only performed after he was considered to be under arrest for possession of marijuana, tampering with physical evidence, and resisting arrest.

Sgt. Cavallaro believed the other occupants of the vehicle were frisked but not searched. Sgt. Cavallaro did not see which officers frisked which occupants. Sgt. Cavallaro did not personally frisk or search any occupant. Sgt. Cavallaro believed that these frisks were conducted to ensure that the other occupants were not armed for officer safety while they conducted their investigation. Sgt. Cavallaro made no observations of the other occupants that led him to believe that they were armed, but thought it was possible that § 87(2)(b)'s behavior was intended to create a diversion for the other passengers.

PO Tobin (BR 14) confirmed that he, too, detected an odor of marijuana upon approaching the vehicle. PO Tobin said that after § 87(2)(b) reached for his waistband and refused to show his hands, he pulled § 87(2)(b) from the vehicle. PO Tobin placed § 87(2)(b) into handcuffs. As PO Tobin took § 87(2)(b)'s right hand to handcuff it, he observed § 87(2)(b) discard an object to the ground with his hand by kicking at or stomping on it. Once PO Tobin handcuffed § 87(2)(b) he asked him, "Dude, why are you doing this? It's unnecessary." Sgt. Cavallaro then approached and picked up a small, clear bag of marijuana from the ground next to the rear left passenger door of the vehicle.

PO Tobin saw that the other occupants of the vehicle at some point were out of the vehicle, but did not see how they came to exit. PO Tobin believed officers may have frisked the other passengers, but did not actually see this or know which officers frisked which passengers. PO Tobin only frisked and searched § 87(2)(b). PO Tobin frisked § 87(2)(b) by patting him down from his shoulders to his ankles and checking his groin. PO Tobin denied inserting his hands beneath the waistband of § 87(2)(b)'s pants, though he might have gripped § 87(2)(b)'s waistband and shaken it. PO Tobin thought another officer may have aided in his frisk of § 87(2)(b) but did not remember who.

PO Rivera (BR 15) also said that when he came within a few feet of the vehicle he smelled marijuana. As was previously mentioned, PO Rivera said that as he approached the vehicle he observed all of the occupants, but particularly § 87(2)(b) making movements. PO Rivera could not describe the movements of § 87(2)(b) or § 87(2)(b) with greater specificity, except to state that they were not sitting still. PO Rivera acknowledged that once § 87(2)(b) was removed from the vehicle, he had § 87(2)(b) and § 87(2)(b) exit

the vehicle and then frisked them. PO Rivera limited his frisk to their waistbands, where he thought they might be carrying weapons. PO Rivera had no recollection of what either § 87(2)(b) or § 87(2)(b) was wearing. PO Rivera thought they might have been carrying weapons based upon § 87(2)(b)'s behavior, the high-crime nature of the location, and the aforementioned general movements he saw all occupants making. PO Rivera did not feel anything consistent with a weapon during these frisks and searched neither § 87(2)(b) nor § 87(2)(b) and § 87(2)(b) were both compliant.

After reviewing the video footage, PO Rivera said that he could not identify the voice of the officer who says, "I have to check you," nor could he identify which civilian replied, "No, no, no, I got no problem with that, I just don't want to get shot." PO Rivera did add that § 87(2)(b) and § 87(2)(b) were compliant to the point that they verbally consented to his frisks of their persons.

PO Rivera denied having any interaction whatsoever with § 87(2)(b) nor did he see if any officer did. PO Rivera did not observe § 87(2)(b) discard marijuana. PO Rivera knew that marijuana was recovered, but only knew this because his fellow officers later told him that marijuana had been recovered. PO Rivera did not know who recovered the marijuana, or when, or how, or from which occupant.

PO Gomez (BR 16) did not remember whether or not he smelled marijuana upon approaching the vehicle. PO Gomez said that although he helped pull § 87(2)(b) from the vehicle, he did not observe him discard the marijuana. PO Gomez never actually observed any marijuana at the scene himself. PO Gomez knew that the marijuana was recovered within seconds after § 87(2)(b)'s removal from the vehicle, but could not remember who recovered it, or from where. PO Gomez acknowledged that he frisked § 87(2)(b) for weapons, and thought it was possible that PO Tobin also did. PO Gomez frisked § 87(2)(b) by patting down the exterior of his waistband. PO Gomez felt no objects or bulges during this frisk. Once the marijuana was recovered and § 87(2)(b) was considered to be under arrest, he was searched, resulting in no contraband.

PO Gomez knew that the other occupants exited the vehicle, but did not see how they came to be out of the vehicle. PO Gomez did not recall frisking or searching any other occupant aside from § 87(2)(b) nor did he recall seeing any officer do so.

An officer can frisk an individual for weapons if that officer has reasonable suspicion the suspect is armed or is a threat to his safety. People v. DeBour, 40 N.Y.2d 210 (1976) (BR 24) Once the limited intrusion of a protective frisk fails to reveal a weapon and the basis for the officer's fear for his safety has abated, the officer may not search an individual. People v. § 87(2)(b) 856 N.Y.2d 502 [Sup. Bronx] (2008) (BR 25)

The smell of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana with probable cause to search a vehicle and its occupants. People v. Johnson, Misc. 3d 1214A (Sup. Ct. Queens) (2009) (BR 26)

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**Allegation P – Abuse of Authority: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro authorized a search of the vehicle in which § 87(2)(b)**

**and § 87(2)(b) were occupants.**

§ 87(2)(b) (BR 12) assumed a search of § 87(2)(b)'s vehicle was conducted, but did not know which officers searched it or how, except that they did not search the trunk of the vehicle.

§ 87(2)(b) (BR 18 and 19) in his telephone statement said that Sgt. Cavallaro searched the vehicle. In his in-person statement, § 87(2)(b) did not repeat this allegation, stating only that Sgt. Cavallaro recovered the bag of marijuana, which he thought might have been on the driver's seat or on § 87(2)(b)'s person.

§ 87(2)(b) (BR 20) in his telephone statement said that Sgt. Cavallaro and another, unspecified, officer searched § 87(2)(b)'s vehicle, finding marijuana in the driver's side door. § 87(2)(b) did not cooperate with the investigation and did not specify further how his vehicle was searched.

§ 87(2)(b) (BR 21) said that two officers, a dark-skinned Hispanic male and another officer who was not described, searched the vehicle. § 87(2)(b) did not cooperate with the investigation and no further details could be obtained.

The video footage taken by § 87(2)(b) of this incident does not depict any search of the vehicle and is not of probative value for this allegation.

Sgt. Cavallaro (BR 13) acknowledged that the vehicle was searched. Sgt. Cavallaro did not know which officer or officers searched it, or at what point, or what parts of the vehicle were searched. The vehicle was searched because § 87(2)(b) "could have been stuffing something" into the vehicle seat behind him, and because § 87(2)(b)'s behavior could have been designed to distract the officers from something his passengers were doing. Nothing was recovered from this vehicle search.

PO Tobin (BR 14) denied searching the vehicle, and did not know if it was searched by his fellow officers.

PO Gomez (BR 16) assumed that a search of the "lunge-able, grab-able" area of the vehicle was conducted based upon § 87(2)(b)'s movements. PO Gomez did not himself conduct this search, and never personally observed an officer inside of the vehicle; he just assumed that the search was conducted because he felt one should have been conducted in this instance. PO Rivera (BR) similarly assumed that a vehicle search was conducted but did not actually observe any officer inside of the vehicle.

Officers may conduct a limited search of the reachable area of the vehicle when they see a person make furtive movements inside the vehicle. *People v. Torres*, 74 N.Y.2d 224 (1989) (BR 27). When any "actual and specific" danger has been eliminated, an officer may not extend his search into a stopped vehicle without probable cause. *People v. Mundo*, 750 N.Y.S.2d 837 (2002) (BR 28) The smell of marijuana alone is sufficient to provide police who are trained and



experienced in the use of marijuana with probable cause to search a vehicle and its occupants.  
People v. Johnson, Misc. 3d 1214A (Sup. Ct. Queens) (2009) (BR 26)

§ 87(2)(g)

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**Allegation Q – Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, Sergeant Charles Cavallaro spoke discourteously to § 87(2)(b)**

**Allegation R – Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, Police Officer James Tobin spoke discourteously to § 87(2)(b)**

**Allegation S – Discourtesy: At East 194 Street and Bainbridge Avenue in the Bronx, and en route to the 52<sup>nd</sup> Precinct stationhouse, Police Officer Juan Gomez spoke discourteously to § 87(2)(b)**

§ 87(2)(b) (BR 12) said that later, after he was removed from the vehicle, he asked bystanders to record and continuing “mouthing off” to the officers, at which time an officer matching PO Gomez’s description allegedly told him, “Shut the fuck up. No one cares.”

§ 87(2)(b) also alleged that in the police vehicle en route to the 52<sup>nd</sup> Precinct stationhouse, when § 87(2)(b) said he was going to call his lawyer, PO Gomez said, “Tell your lawyer to suck my dick.”

§ 87(2)(b) (BR 18 and 19) alleged that PO Tobin repeatedly said “Shut the fuck up” during this incident.

Video footage (see above file 2016-09-30\_12-10-29.mp4) does not document any officer telling § 87(2)(b) or § 87(2)(b) to “Shut the fuck up,” or, “Tell your lawyer to suck my dick.” It does document a voice saying, “fucking...are you serious? Stupid motherfucker,” but the person who utters this is not depicted on camera. At the end of § 87(2)(b)’s interview, upon reviewing the video footage of this incident, § 87(2)(b) said that the voice at 00:52 seconds saying, “fucking...are you serious? Stupid motherfucker,” was Sgt. Cavallaro. § 87(2)(b) had not made this allegation prior to reviewing the video footage.

All officers interviewed, including Sgt. Cavallaro (BR 13), denied making the aforementioned statements, and denied hearing any officer say them. Sgt. Cavallaro said that a crowd had by this time begun to gather at the scene, and that it was possible the statement, “Fucking...are you serious? Stupid motherfucker,” was made by a member of the crowd.

None of the officers could identify the voice audible saying, “fucking...are you serious? Stupid motherfucker,” on the video footage. PO Tobin (BR 14) acknowledged that this may have

been uttered when the officers recovered the marijuana, but denied saying this himself or knowing which officer said it.

Officers are to be courteous and respectful in their dealings with the public. Patrol Guide Procedure 203-09 (BR 29).

§ 87(2)(g)

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**Allegation T – Abuse of Authority: At the 52<sup>nd</sup> Precinct stationhouse, Sergeant Charles Cavallaro authorized a strip search of § 87(2)(b)**

**Allegation U – Abuse of Authority: At the 52<sup>nd</sup> Precinct stationhouse, officers threatened § 87(2)(b) with the use of force.**

It is not disputed that § 87(2)(b) was strip-searched inside of the 52<sup>nd</sup> Precinct stationhouse.

§ 87(2)(b) (BR 12) said that after he was searched at the front desk of the 52<sup>nd</sup> Precinct stationhouse, Sgt. Cavallaro, PO Tobin, PO Gomez, and PO Rivera all brought him to a bathroom at the rear of the stationhouse. PO Gomez guarded the bathroom door while Sgt. Cavallaro instructed § 87(2)(b) to remove his clothing. § 87(2)(b) was uncomfortable with being naked. Multiple officers – § 87(2)(b) did not specify which – told § 87(2)(b) that they would “beat the shit” out of him if he did not comply.

§ 87(2)(b) and § 87(2)(b) were released from the scene and therefore were not witnesses to this portion of the incident. There is no video of this part of the incident.

Sgt. Cavallaro (BR 13) acknowledged that he authorized a strip search of § 87(2)(b) at the 52<sup>nd</sup> Precinct stationhouse. Sgt. Cavallaro believed that § 87(2)(b) might have had additional contraband on his person because of his movements while inside of the vehicle, his

failure to follow commands, the odor of marijuana in the vehicle, the marijuana that had fallen when he was removed from the vehicle, and because the frisks and searches of his person on scene and at the front desk at the stationhouse had not yielded any further contraband. Sgt. Cavallaro did not recall if § 87(2)(b)'s person smelled of marijuana. Sgt. Cavallaro had no other reason to authorize the strip search. Sgt. Cavallaro did not remember which officers were present to conduct the strip search. The strip search yielded negative results.

PO Tobin (BR 14) believed § 87(2)(b) was strip searched. PO Tobin thought § 87(2)(b) might have had contraband secreted on his person because of the "way the incident went down." PO Tobin did not recall the circumstances of the strip search, such as which officers were present while it was conducted.

PO Rivera (BR 15) confirmed that Sgt. Cavallaro authorized the strip search at the 52<sup>nd</sup> Precinct stationhouse. Sgt. Cavallaro provided no rationale to PO Rivera for authorizing it. PO Tobin conducted the strip search, but PO Rivera was also present to observe it. PO Rivera thought Sgt. Cavallaro and PO Gomez may also have been present, but was not sure.

PO Gomez (BR 16) had no recollection of § 87(2)(b) being strip searched.

All of the officers categorically denied that they ever threatened § 87(2)(b) with the use of force.

According to People v. Hall, 10 N.Y.3d 303 (2008) (BR 30), in order to strip search an individual, an officer must have an articulable, factual basis supporting reasonable suspicion, beyond probable cause to arrest, to believe that the arrestee secreted contraband, evidence, or a weapon on their person.

§ 87(2)(g)

§ 87(2)(g)

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§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

[Redacted text block]

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date